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No. 88-841

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

DOROTHY A. STEVENS,

Petitioner,

v.

DOROTHY WRIGHT TILLMAN, CLASCILE BROUGHTON, DEBORAH LEE JOHNSON, ANGELA SLATE, CURTIS SLATE, MARY E. TILLERY, CHERYL MORRIS, GLADYS HAMPTON, MATTIE TARVER, EMMA BARBER, a/k/a EMMA LIDDELL, a/k/a EMMA PROCTOR,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a plaintiff may recover under 42 U.S.C. §1985(3) when she has not shown that an alleged racially motivated conspiracy deprived her of some independent, federally protected right.

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STATEMENT OF THE CASE

Petitioner's ("Stevens") statement of the case contains mischaracterizations and omissions which seriously distort the record. Without setting forth a full factual statement

below, Respondents (the "Parents") will detail enough of the record to clarify the facts relevant to the Petition for Certiorari ("Petition"). The Parents will also set forth the relevant procedural history of the case, which the Petition ignores.

A. Facts

Stevens misleadingly suggests that the Parents were indisputably motivated by race, and, moreover, that the District Court and Court of Appeals so found. Petition at 3-4, 10. This is incorrect. Not only have the parents emphatically denied racial animus throughout this case, the District Court found Plaintiff's proof of racial animus "doubtful," 661 F.Supp. 702, 707 (N.D.Ill.1986) (App. B-8 to Petition), and the Court of Appeals made no finding of racial animus, as discussed below in the Procedural History.

The record is clear, and Stevens herself admitted at trial (T. 1069-89),[1] that the Parents were genuinely concerned about two non-racial issues: (1) the quality of education of their children at the Mollison School, and (2) their children's safety during school hours from the influence of the street gangs, which run rampant in the neighborhood surrounding Mollison.

With respect to quality of education, it was undisputed at trial that in 1978-1980, Stevens's school failed to teach children basic skills. For example, in 1978, more than *90%* of the students at *every* grade level were below their age-appropriate reading level. (Joint Ex. 1) This was not simply

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[1] References to the transcript are denoted below as "T. ____." References to plaintiff's exhibits are denoted as "PX ____," while defense exhibits are denoted as "DX ____."

because Mollison was in a poor neighborhood, since schools of comparable poverty rank averaged only *50-60%* below level. (*Id.*) Stevens's superior, Dr. Bryan, rated Stevens in the bottom 25% of principals in his district because of her school's poor academic performance in 1978-1979. (PX 9-11; T. 193, 210-22, 229-38)

With respect to the safety of students, in 1980 Mollison had an "open campus" policy, under which students were sent home unsupervised during lunch. (T. 660-66, 970-87) Stevens and the Parents agreed that this system endangered the children, who were subject to attack, accident, or gang recruitment as they walked home and back during lunch. (T. 970-77, 1099) The Parents wanted a "closed campus" like many other schools, where children ate lunch at school, supervised by teachers.

The defendant Parents, as well as many other parents, organized around both the education and safety issues. During November and December of 1980, they met with Stevens, teachers, and then spoke at the Chicago Board of Education's (the "Board") formal monthly meeting to air their grievances. During this time, there was never any mention of removing Stevens, but only of the poor education and lack of safety at the school. (T. 2490-2624; DX 26-31)

Finding no response to their concerns from the Board or Stevens's superior, Dr. Frank Gardner, the Parents organized a one-week boycott of classes, during which they peacefully picketted and leafletted. The boycott did not seek Stevens's removal or even criticize her. The boycott ended when Dr. Gardner agreed (1) to investigate the school's poor educational performance, and (2) to allow the Parents to supervise their children at lunch on school property. (T. 2384, 2548, 2555-56; DX 17, 18, 26-31)

The Parents did not seek Stevens's transfer from Mollison until *after* Stevens resisted the compromise worked out by Dr. Gardner. The Parents found Stevens ultimately resistant to meaningful change in the school. (*e.g.*, T. 2560) Specifically, she was unwilling to change the system by which students were tested so that they could advance through the curriculum. (T. 1105-10) Stevens's own witness found this system improper, and shortly before her transfer, Dr. Gardner had ordered Stevens to change the testing system.[2] (T. 224 and see T. 2388) Also, Stevens could not persuade teachers to adopt a full closed campus system, and she could not come up with alternatives.[3] Thus, the safety issue also remained unresolved.

After the Parents staged a sit-in in Stevens's office,[4] Stevens took a voluntary two month, paid leave of absence, and returned to the Chicago system as principal of another school, receiving a raise in salary. She retired

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[2] Dr. Gardner and School Superintendant Caruso each prepared formal reports which were critical of both the open campus policy and the manner in which Stevens had administered the academic program at the school. (DX 17, 18)

[3] The teacher's union contract gave the teachers control over this issue. However, as discussed below, Stevens's replacement at Mollison, Dr. Dervin, creatively manipulated the teachers' schedules to impose a *de facto* closed campus system at the school.

[4] While Stevens alleges that threats were made during the sit-in in the principal's office, Petition at 4, that fact is in dispute. What is not in dispute is that no one physically barred Stevens from her office, touched her, or said they would harm her. Dr. Gardner and the press were present at all times. (T. 886-907, 2394-95, 2610-18, 2959) A member of the press testified that Stevens appeared calm and unshaken. (T. 2956-57) *No* evidence shows that the Parents were arrested four times or that they were arrested for assault, contrary to the implications in the Petition at 4. The one arrest following the sit-in was for trespass. (T. 2960) Charges were dropped. (App. A-2)

in 1985 at age 65. (T. 1089-95) Contrary to Stevens's assertion in her Petition at 5, she never testified, and no evidence suggests, that she retired early because of the events that had occurred at Mollison *four years* before her retirement.

No evidence suggests, and Stevens has never argued, that any Board of Education actor responsible for Stevens's transfer was motivated by race, influenced by race, or believed that any of the Parents were motivated by race. The evidence in the record is clear that no state actor acted under any racial motive of any kind. Stevens never sued the Board.

It is also undisputed that the Parents never asked that Stevens be removed because she is white or asked that she be replaced by a black principal. (DX 26-33; T. 2163-66) Stevens herself admitted that the Parents had non-racial complaints and motivations. (T. 1069-89) While Stevens's replacement, Dr. Dervin, is Black, the record shows that the Parents met immediately with her, *and told her that if she did not satisfy the Parents' concerns, they would seek her removal just as they had sought Stevens's removal.* (T. 2163-66) In fact, Dr. Dervin made prompt changes on both the testing and safety issues. (T. 2172-2228) She restructured the testing system and classrooms, and imposed a modified "closed campus" system, over teacher objections. The changes satisfied the Parents.

If the Parents had simply wanted a Black principal, as Stevens claims, their activity would have ended at this point. But they remained active in school affairs despite Stevens's departure, broadening their focus from educational reform at Mollison to reform of the Chicago Public School system as a whole. Defendants and other parents formed a not-for-profit organization called The Parent

Equalizers of Chicago, whose purpose was to educate other Chicago parents as to School Board policy and assist them in monitoring the way in which their own schools were run. (DX 19, 21-25; T. 2961-73) This group was founded and operated *after* Stevens had been transferred from Mollison.

B. Procedural History

After the Complaint was filed, the Parents moved to dismiss the claim under §1985(3), arguing, among other things, that the claim was not predicated on the violation of some cognizable federal right. The Parents relied on such cases as *Cohen v. Illinois Inst. of Technology*, 524 F.2d 818 (7th Cir. 1975) (Stevens, J.), *cert. denied*, 425 U.S. 943 (1976), and *Murphy v. Mt. Carmel High School*, 543 F.2d 1189 (7th Cir. 1976), cases whose reasoning was ultimately adopted by this court in *Carpenters v. Scott*, 463 U.S. 825, 832 (1983).

The first District Judge assigned to the case denied the Motion to Dismiss, holding that a §1985(3) claim predicated on a denial of equal protection need not allege state action. 568 F.Supp. 289, 293 (N.D.Ill. 1983) (App. C-6)[5] The Parents moved to reconsider under the authority of *Scott*, which had been decided two days before the District Court's ruling. The Court vacated its previous decision as "an error in light of *Scott*," but still denied the Motion to Dismiss, holding that the state action requirement of *Scott* was met because the "aim of the conspiracy" was to "influence" a state actor, the Board, to remove Stevens. *See* App. E-2 to E-3. However, Stevens *abandoned* this precise issue until filing the Petition. Throughout trial,

[5] In citing to the lower court opinions in this case, this Response will refer to the pages in the Appendix to the Petition.

arguments on directed verdict, and on appeal to the 7th Circuit, Stevens never argued that the state action requirement was met because the Parents merely aimed to "influence the State."

At the close of Plaintiffs' case, the Parents moved for a directed verdict, arguing, among other things, (1) that their organizational petitioning, leafletting and boycotting activities immunized them from liability under the authority of *NAACP v. Claiborne Hardware*, 458 U.S. 886 (1982), and *Stern v. United States Gypsum*, 547 F.2d 1329 (7th Cir. 1977), *cert. denied*, 434 U.S. 975 (1977); and (2) that Stevens had not shown that at least *two* Defendants shared the racial animus required to make out a conspiracy claim under §1985(3). On the first argument, the District Court agreed with the Parents that all of their activities were protected under *Claiborne Hardware* except for, perhaps, the sit-in, upon which it reserved ruling pending further briefing as to whether the evidence in the case disclosed any threats of violence. 661 F.Supp. 702, 705-06 (N.D.Ill. 1986) (App. B-3 to B-7)

With respect to evidence of racial intent, the District Court found it to be a "difficult issue." *Id.* at 707 (App B-8) It denied the directed verdict at that time under authority holding that "if it has doubts about whether to grant a motion for a directed verdict, the better practice is to deny the motion and let the jury return a verdict." *Id.* (App. B-9) Contrary to the implications in the Petition, the District Court never made any finding of racial animus. Neither did the Court of Appeals.[6]

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[6] While Stevens implies that the Court of Appeals made a finding of racial animus, Petition at 4, it of course did no such thing. It *assumed*, because it was reviewing the grant of a motion for directed verdict, that one defendant, Tillman, was motivated by racial animus. 855 F.2d at 405 (A-21). The Court did not rule on the sufficiency of the evidence with regard to racial animus.

At the close of all of the evidence, the Parents again moved for a directed verdict, raising the two previous arguments, but also arguing that Stevens had not proved a violation of any cognizable federal right. Stevens argued that the conspiracy deprived her of certain state-created rights, and "her right under the Fourteenth Amendment to equal protection." Following the Court's decision in *Great American Fed'l Savings & Loan v. Novotny*, 442 U.S. 366 (1979), the District Court granted the motion for directed verdict because Stevens had not identified a violation of a federally protected right.[7] *Stevens v. Tillman*, No. 81 C 3588, slip op. at 2-7 (N.D.Ill. Dec. 16, 1986) (App. D-2 to D-6). Because of its ruling, the Court did not need to revisit the *Claiborne Hardware* issue or reconsider the evidence showing that the Parents lacked racial animus. (App. D-7)

On appeal, Stevens continued to argue that state-created rights may be asserted via §1985(3), and also that she had shown an equal protection violation. But she did *not* argue that the state action requirement of the Fourteenth Amendment could be met by showing that the conspiracy was merely aimed at influencing the State. In affirming the District Court, the Court of Appeals applied "the accepted

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[7] The Court voiced its frustration with Stevens on this issue, stating in a footnote (App. D-6, n.4):

> The Court has been generous in its attempt to discern just what rights the Plaintiff is asserting have been violated .... The Court expects, however, that by the time the case reaches the trial stage, the Plaintiff's claims would be more refined than at the pleading stage. In this case, the Court's specific requests for precise definition of the §1985(3) claim and case law in support repeatedly were met by conclusory arguments on the part of Plaintiff's counsel. This, as well as the extent of the directed verdict motions, has made the Court's rulings on these motions particularly difficult.

understanding" of this Court's most recent §1985(3) cases, (App. A-23), and held that Plaintiff had not proved that the alleged conspiracy deprived her of some federally protected right. 855 F.2d at 404-05 (App. A-20 to A-21) In doing so, the Court held (though the issue was not specifically raised in Stevens's brief) that a conspiracy to influence the State would not satisfy the state action requirement of the Fourteenth Amendment and *Scott* when the State had not acted in a prohibited way and caused no cognizable injury to Stevens. 855 F.2d at 404-05 (App. A-20 to A-21).

In dictum, the Court suggested that a mere desire to influence the State might be protected under the so-called *Noerr-Pennington* doctrine, which is essentially the same as the *Claiborne Hardware* analysis. 855 F.2d at 404-05 (App. A-21). But the Court did not need to reach this issue since Stevens had not argued or shown that the Board of Education had violated any of her rights, and the Court had correctly ruled that some improper state action was required under Stevens's Fourteenth Amendment theory. Her alleged injuries came from purely private conduct.

REASONS FOR DENYING THE WRIT

I.

THIS CASE INVOLVES A STRAIGHTFORWARD APPLICATION OF THIS COURT'S PRECEDENT. IT RAISES NO QUESTIONS OF UNUSUAL SIGNIFICANCE, CREATES NO CIRCUIT CONFLICT, AND IN ANY EVENT, WAS CORRECTLY DECIDED BELOW.

This Court has already decided and settled the legal principles necessary to resolve this case. The Court of Appeals faithfully applied those principles to the facts, and in so doing created no circuit conflict and generated no confusion in the law. This Court's intervention is unwarranted.

A. The Petition Raises No Novel or Significant Issues of Interpretation of 42 U.S.C. §1985(3).

In three opinions, the Court has defined the contours of a claim under §1985(3). While the statute itself does not require state action, *see Griffin v. Breckenridge*, 403 U.S. 88, 101 (1971), the statute also creates no rights of its own force. It is merely remedial, and the rights §1985(3) protects "must be found elsewhere." *Carpenters v. Scott*, 463 U.S. 825, 833 (1983). That "elsewhere" is in *federal* law. A §1985(3) remedy exists only "when some otherwise defined federal right—to equal protection of the laws or equal privileges and immunities under the laws—is breached by a conspiracy in the manner defined by the section." *Great American Federal Savings & Loan v. Novotny*, 442 U.S. 366, 376 (1979); *see also, id.* at 379 (Powell J. concurring) (limiting §1985(3) to fundamental federal *constitutional* rights); *id.* at 388 (White, Brennan and Marshall, JJ. dissenting) ("the words 'equal privileges

and immunities' in §1985(3) refer to substantive rights created or guaranteed by other federal law, be it the Constitution or federal statutes other than §1985(3) . . ."). Thus, when the federal right sought to be vindicated through §1985(3) requires "state action," plaintiff must prove state action in such a case to recover. *Carpenters v. Scott*, 463 U.S. at 833. Such a result necessarily follows from the fact that §1985(3) creates no rights of its own force.

The lower courts, including the ones in this case, have uniformly and consistently applied these principles.[8] Given such uniformity and consistency, this case raises no issue significant enough for this Court to grant certiorari.

B. The Court of Appeals Properly Applied Settled Principles of This Court's Precedent to the Facts of This Case.

The principles of this Court's cases apply to the facts of this case in a straightforward way. Stevens's allegation that the conspiracy deprived her of various state-created rights does not satisfy *Novotny* and *Scott*'s clear federal right requirements. In any event, Stevens's Petition fails to assert, and she apparently abandons, her

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[8] *See McNutt v. Duke Precision Dental & Orthodontic Labs, Inc.*, 698 F.2d 676, 680 (4th Cir. 1983) (no state action where private actors tried to influence state actor); *Martinez v. Winner*, 771 F.2d 424, 440 (10th Cir. 1985) (§1985(3) requires deprivation of some independent federal right); *Mahoney v. National Org. For Women*, 681 F.Supp. 129, 134 (D.Conn. 1987) (dismissing §1985(3) claim based on First Amendment for lack of state action); *Burrell v. Bd. of Trustees of Georgia Military College*, 696 F.Supp. 1522, 1524 (M.D. Ga. 1988) (applying traditional state action doctrine to §1985(3) claim); *Havas v. Thornton*, 609 F.2d 372, 374 (9th Cir. 1979); *Thompson v. Machinists*, 580 F.Supp. 662, 667 (D.D.C. 1984); *Kinniburgh v. Burlington Northern R. Co.*, 568 F.Supp. 655, 656-57 (D.Mont. 1983).

theory that she could base a violation of §1985(3) solely on state-created rights.[9]

The only Federal right she identifies in her Petition is the Fourteenth Amendment right to equal protection of the laws. But because §1985(3) creates no rights, to prevail Stevens must meet the elements of an equal protection violation, which of course in this context must include state action, and intentional discrimination by the state actor. *See, e.g., Washington v. Davis*, 426 U.S. 229, 238 (1976). She has met neither element.

No evidence suggests, and Stevens had not alleged, that any state actor had any racial intent or believed that any of the Parents acted with racial intent. Stevens's equal protection theory, and her §1985(3) claim based on it, must therefore fail. This clear intent issue suffices to dispose of the case.

Stevens alleges that only the Parents, not the Board, acted with racial animus. While she has failed to prove this, *see* Statement of the Case above and Section II

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[9] Her theory rested on *Life Ins. Co. v. Reichardt*, 591 F.2d 499 (9th Cir. 1979), which, as the Court of Appeals below ruled, "preceded both *Novotny* and *Scott* and is inconsistent with them . . ." 855 F.2d at 405 (App. A-22). *Reichardt* has been ignored even in the Ninth Circuit. *Havas v. Thornton*, 609 F.2d 372, 274 (9th Cir. 1979) (plaintiff must show deprivation of federal right); *Kinniburgh v. Burlington Northern R. Co.*, 568 F.Supp. 655, 656-57 (D.Mont. 1983). Other courts have also uniformly declared Reichardt dead in light of *Novotny* and *Scott*. *See Thompson v. Machinists*, 580 F.Supp. 662, 667 (D.D.C. 1984); *Shaare Tefila Congregation v. Cobb*, 606 F.Supp. 1504, 1509-10 (D.Md. 1985), *aff'd*, 785 F.2d 523 (4th Cir. 1986), *rev'd on other grounds*, 481 U.S. 615 (1987). Because *Reichardt* has been superseded by authority from this Court, as well as by authority from within the Ninth Court, it presents no genuine Circuit conflict. In any event, the Petition does not advance a theory grounded in *Reichardt*.

below, this private racial animus does not make out a predicate violation of the Fourteenth Amendment. Stevens fails to (and cannot) assert that she has satisfied this Court's current definition of state action required by the Fourteenth Amendment. Even a cursory review of this Court's state action jurisprudence shows that state action is clearly absent, since state action requires that state actors actively encourage, coerce or become entangled in a legal violation: "Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment." *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982); *see also Rendell-Baker v. Kohn*, 457 U.S. 830, 839-43 (1982).

C. The Petition Misreads the Lower Court's Opinion And Fails to Identify Any Conflict of Lower Court Opinion, or, Indeed, Any Authority In Support of Petitioner's Theory of Relief.

The Petition takes two tacks in arguing that Stevens's Fourteenth Amendment theory is worthy of this Court's attention. Her primary argument for certiorari is that the lower court imported a "property right" requirement into the Equal Protection Clause. Petition at 6. The Court of Appeals did no such thing. The Court first looked for a federal predicate outside the equal protection clause. It merely found, in so doing, that Stevens had not shown that the *Board* deprived her of *any* rights, including any property right or other federal entitlement. 855 F.2d at 404-05 (A-20 to A-21). This was a proper rejection of Stevens's argument to the Court of Appeals that she had some independent federal right not to be transferred from Mollison School to another school. It then turned to the state action issue, part of Stevens's equal protection claim.

It found, correctly, no state action. The Court did *not* hold or imply that the equal protection clause has a "property right" requirement. Stevens never argued (and still has not argued) that the *State* deprived her of equal protection of the laws, regardless of her "property rights" or otherwise. Her equal protection claim thus must fail, as the Seventh Circuit correctly held. Stevens's first reason for certiorari, then, falters on a misconstruction of the lower court's ruling; it provides no basis for granting the Writ.

Stevens second tack is to assert that the lower court misread the state action ruling in *Scott*. But the appellate court's application of *Scott* and other relevant precedent was correct and straightforward. It identified three kinds of conduct within the reach of §1985(3). 855 F.2d at 404 (A-19 to A-20). These three categories are faithful to this Court's precedent, and do not present any reason to reexamine that precedent. The interpretation conflicts with no other Circuit authority.

Stevens's Petition, and her theory of relief, rises and falls on her assumption that this Court in *Scott* broadened the state action requirement of the Fourteenth Amendment *sub silentio* when it wrote in dictum that a conspiracy aimed at "influencing" the State could constitute state action. 463 U.S. at 830. Stevens cites no authority for this interpretation. Indeed, to our knowledge, other than the first district judge in this case, no court has ever reached such a holding. Not only did the Court of Appeals reject this theory, the Seventh Circuit has previously rejected it in dictum as well. *See Grimes v. Smith*, 776 F.2d 1359, 1367 n.16 (7th Cir. 1985). Stevens's theory is thus legally unfounded.

D. Certiorari Is Improper Because Stevens's Interpretation Of *Scott* Has Not Received Adequate Development In This Case And In The Lower Courts Generally.

It is "desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening." *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 917-18 (1950) (Frankfurter, J.) Not only does Stevens's novel interpretation of *Scott*—that it changed state action doctrine—lack authority, it is not ripe for this Court's attention. The very few courts that have addressed the precise issue—*Grimes*, this case, and *McNutt v. Duke Precision*, 698 F.2d at 680—have done so consistently. Moreover, the scarcity of opinions on this issue suggests that it contemplates a fact situation too rare to be worthy of this Court's time and guidance.[10] At the very least, the prudent course would be to wait and allow §1985(3) to continue to be tested in the lower courts, to see whether a conflict or important, recurring issue of interpretation is raised later.

Finally, certiorari is improper because Stevens's interpretation of the *Scott* dictum was not fully fleshed out in the courts below. She did not argue her theory during the hearing on directed verdict or during the appeal. Accordingly, the Parents did not fully argue the issue before the Court of Appeals. The Court of Appeals reached the issue without prompting from Stevens. Thus, certiorari is particularly improper in this case because not only has

[10] The cases footnoted above in n.8, except for *McNutt*, do not hold that a conspiracy to influence the State, without more, may or may not state a claim. They all require a federal predicate, and they apply current state action doctrine if the federal predicate requires state action. *McNutt* holds that a conspiracy to influence the State, without more, fails to state a claim. It is consistent with the lower court rulings in this case.

the *Scott* dictum failed to receive development in the lower courts generally, it was not even fully vented and developed in the courts below. *See City of Springfield v. Kibbe*, 480 U.S. 257 (1987) (dismissing writ as improvidently granted even though court of appeals briefly addressed issue, where petitioner had not argued or raised issue to court of appeals).

E. Stevens Misreads the Court of Appeals Opinion In Suggesting That the Relevant Law Under §1985(3) Is Unclear.

The Court of Appeals did not, as suggested in Petition at 12, express doubt about the correctness of its interpretation of this Court's precedent. It followed the "*accepted* understanding of §1985(3)" as set forth in that precedent. 855 F.2d at 405 (A-23) (emphasis added). The Court referred to flux in §1985(3), but in so doing, it *never* said or implied that this Court's rulings in *Novotny* or *Scott* were confusing or in need of elaboration. Rather, it described the *statutory language* as "opaque." A-19. The "changing interpretations" the Court mentioned referred to changes in the scope of actionable *non*-racial animus, an issue not raised in this case. A-22. Finally, when it said that it could not "pretend certainty" as to whether the "accepted understanding" is "right," the Court merely meant that with a Century-old statute as obscure as §1985(3), no one could ever be certain about legislative intent. Whatever the meaning of the *statute's* "opaque" words, *this Court* has given the statute a definitive meaning, as shown above in Section I.A. The Court of Appeals did not express *any* doubts as to how to read *this Court's* construction of §1985(3). As shown earlier, that construction is not in doubt, and Stevens offers no case showing that it is.

Indeed, if Stevens were right about "confusion," one might expect her to offer *even one* case after *Scott* holding that §1985(3) should be read as she wishes. She offers none. One might expect *some* lower court conflict on this issue. She identifies none. In short, the relevant law is not confused, and the Court of Appeals did not in effect confess ignorance as to the proper reading of this Court's precedent. Certiorari should be denied.

F. This Case Has Little Significance Except to the Parties. It Raises No Important Federal Claims Deserving This Court's Attention.

Stevens may personally feel she was "victimized," but so does every plaintiff who "cries out for justice" to this Court. Petition at 13. The Parents feel just as strongly that they acted rightly in the interests of their children, acted without racial intent, and acted without violating Stevens's rights. But this dispute on the facts is not a proper basis for granting the Writ. While the facts belie the claims of Stevens of race discrimination, the issue for this Court is whether Stevens has raised a significant *federal* issue. As shown above, she has not. She could have brought her assault theory and sought her "justice" in State Court, rather than seeking to use §1985(3) to federalize State tort law. Her cries for justice are important to her; the Parents' cries for justice and for their children are important to them; but neither cry is of national significance.

Stevens's closing rhetorical gambit of reversing the races of the parties, Petition at 13, would not lead to a different result on the merits or raise novel issues of national concern. This Court's precedent makes clear that *any* plaintiff using §1985(3), white or black, must allege the deprivation of an independent federal right. This is

easily done in virtually every instance of traditional "Klan-type" activity.[11] But Stevens has not done so here. Her personal failure to find a violation of a substantive federal right does not transform this case into one of "national importance."

II.

THE WRIT SHOULD BE DENIED BECAUSE THE ISSUE RAISED IS UNNECESSARY TO THE ULTIMATE RESOLUTION OF THE CASE: STEVENS WILL LIKELY LOSE ON OTHER GROUNDS.

The Parents have several meritorius arguments which render the result reached below correct without regard to the question raised for certiorari. Because the full trial record shows that this Court's ruling will not affect the ultimate outcome of the case, it would not be a prudent exercise of this Court's discretionary jurisdiction to hear this case.

First, the evidence against racial animus is overwhelming. The District Court had "doubts" about Stevens's *prima facie* evidence of racial animus *before* the Parents even introduced their evidence. *See* 661 F.Supp. at 707 (App. B-8 to B-9). The District Court did not need to reach this factual issue at the close of the evidence. It is quite probable that Stevens could not survive another directed verdict motion on this issue. The Parents' conduct

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[11] For example, paradigmatic Klan activity usually is aimed at interfering with the right to vote, the right to travel, the right to equal housing opportunity, the right to access to public accommodations, all of which are protected against private action by the federal constitution or federal statute. The "second category" of §1985(3) violations defined by the Court of Appeals, (App. A-20) covers such typical Klan activity and belies Stevens's parade of horribles in her Petition.

was fundamentally at odds with racial motivation. For example, they immediately threatened to remove Stevens's *black* replacement if she proved unresponsive to their concerns about education and safety. They formed a city-wide parents' rights group around these issues long after Stevens was transferred. This conduct is inexplicable if the Parents simply wanted a black principal. These facts were not yet fully before the District Court when it already had "doubts" about plaintiff's evidence of racial animus. Where, as here, the facts developed after a three-week trial cast substantial doubt on the existence of the factual linch-pin (racial animus) of Plaintiff's purported federal claim, granting a writ premised on such a fact is improper. *Cf. Belcher v. Stengel*, 429 U.S. 118, 119-120 (1976) (dismissing writ as improvidently granted where record disclosed substantial doubt as to factual premise of petition for certiorari).

Second, both the District Court and the Court of Appeals indicated that even assuming Stevens did prove racial animus (which she did not), she would likely lose under the immunity based on *Claiborne Hardware* and the *Noerr-Pennington* doctrine. *See* 661 F.Supp. at 705-06 (App. B-3 to B-7); 855 F.2d at 404-05 (App. A-21). Thus, this case would likely turn on issues other than those raised in the Petition, rendering the Court's intervention largely academic. Granting the Writ would be improper in such circumstances.

CONCLUSION

For the above reasons, Respondents respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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